

Specialist Report for Water Rights Federal Lands

Revised October 2004

This report addresses water rights for Federal Land for all Adjustment Action cases. Region 4's policy on water rights can be found at FSM 2540. It is the purpose of this report to (1) understand and acknowledge all water rights, uses, and needs involved in a land adjustment action, (2) to ensure that we convey in an appropriate manner only the water rights we intend to convey and protect the ones we reserve.

Check which type of report this is:

Preliminary ☐
Final ☒

If the case is complex and is not completely composed and there are confounding issues, check Preliminary. As the composition of the case becomes clear and the confounding issues are resolved, the Final report can be completed.
If the case is simple and no water right issues exist, check final.

Case Name: 8 and Fir St

Party Name:

State:

Forest:

Case Designation:

1). Legal Description Of The Tract(s) Involved

Describe all parcels involved in this land adjustment case

Attach a map (minimum 7½ minute USGS topographic quad and others as appropriate) showing the lands involved

Aliquot Parts						
Township	34N	Range		55E		
Sec	15	Q	NE	QQ	NW	Lot 3, 4, 2 and the
westerly 5 feet of Lot 1 of Block 69; Lots 18-22, 23 and the westerly 5 feet of Lot 24 of Block 91						
Metes and Bounds						

If there are no water rights on the parcel, check NONE here ☒ then proceed to 3).

2). List All The Water Rights On The Federal Parcel

(Electronically replicate this section for each water right,)

Water Right #						
Owner						
Beneficial Use						
Source						
Amount						
Period Of Use						
Priority Date						
Point of Diversion	T.	R.	Sec.	Q	QQ	Lot
Place of Use	T.	R.	Sec.	Q	QQ	Lot

Date Last Used:

Will this water right above be conveyed, YES or NO?

If YES, Explain why the water right is no longer needed by the Forest Service. Address management objectives in the explanation.

If NO, Explain how we will retain and protect our interests in the water right.

3). **Inspection Of Lands**

Attach a copy of a supplemental statement, (or if available a Certificate of Inspection) that shows the lands in question have been inspected. Include Name, Date, and Observations. *There may be circumstances where there is a Water Use or Water Conveyance on the parcel in question without the existence of a state "water right" on record. For this purpose, it is imperative that during the Inspection Of Lands phase, all conveyances (ditches), encumbrances, and other uses be identified and documented.*

Check here if attached []

Explain any other aspects about these water right that need clarification.
There are no water rights in the NWNE ¼ ¼ of sec 15.

4). **Summary**

Discuss any other issues that might create future problems or actions items required in acquiring or reserving water rights. List the water right number for each comment.

Forest/Zone Lands Specialist:

Forest Water Rights Coordinator or Hydrologist:

None apparent

State Coordinator:

According to the data presented in this report, there appears to be:

 x NO POTENTIAL RISK associated with the Federal Lands in this case. It is recommended that the case proceed as outlined above.

 A POTENTIAL RISK associated with the Federal Lands in this case and further discussion is needed in 5).

Certification Signatures

Forest/Zone Lands Specialist

Date

Forest Water Rights Coordinator
Or Hydrologist

State Coordinator

Barbara Drake
Jimmie Howell

Date 2/26/08
Date 7/14/09

If there are NO risks associated with this land adjustment case,
no further signatures are needed.

5). **Risk Assessments**

Complete this Section when there are risks associated by explaining below.

District Ranger Comments:
Forest Supervisor Comments:
Action Items:
Regional Water Use and Protection Program Manager Comments:

6). **Certifications**

By signing below, we acknowledge that there is a potential risk associated with this case.

- _____ The risk is associated with acquiring a water right through paid compensation only to not be able to exercise in whole or in part, the right and be subject to forfeiture.
- _____ The risk is associated with not being able to protect the ability of a water right holder to exercise a viable water right, thereby causing the right to become subject to forfeiture through non-use.

We further recognize that the Forest has outlined certain action items that will be implemented to minimize the risk. We concur with the findings of this report and recommend that the case proceed as outlined above.

Certification Signatures

District Ranger _____

Date _____

Forest Supervisor _____

Date _____

Regional Water Uses
and Rights
Program Manager _____

Date _____

Director of Lands _____

Attachments

Attachments

Include Copies Of

- Map(s) for Non-Federal and Federal lands
- Search documentation from state water rights office
- Supplemental Statement of Inspection
- Copy of Deeds for reservations or outstanding rights
- Copy of Patent for reservations, or outstanding rights
- Office fact sheets
- Reservations
- Exceptions, and other pertinent documents
- Forward an electronic copy of the Water Rights Specialist Report to RO Lands Water Uses Program Lead and forward copies of any non-electronic attachments to the same location in the Regional Office.
- Other pertinent documents

Definitions and Guidance (DO NOT submit as part of this report)

Definitions

Acquired - refers to a water right, that was historically owned by a third party but will now be owned by the U.S. as a result of the land adjustment action. Water rights are appurtenant to the land and unless the water right is legally excepted it stays with the land.

Amount – the quantity of water required, usually expressed in cubic feet per second (cfs). Other units may include acre-feet, gallons per minute, miners inch, or a livestock amount i.e. 40 cattle.

Beneficial Use – Water must be utilized in a manner that is consistent with state approved uses.

Conveyed - refers to a water right we own but are going to give up to the new land owner with land we are conveying in the land adjustment action.

Excepted - refers to a water right that the current owners want to keep and continue using the water even though the land it was appurtenant to, now belongs to us. Protection of this effort is accomplished through an exception or reservation.

Outstanding Rights - Water rights, in general, can carry rights that imply reservation or outstanding rights on lands that need to be dealt with before completing a case. At times, these reservations or outstanding rights have not been addressed in recorded documents nor have legal documents been executed that would protect any auxiliary rights associated with the water right. If there are no recorded outstanding rights, then you must

ascertain what rights, if any, a third party who is not involved in the case may have. This can be done by evaluating the water right, inspecting the land, and requesting a legal opinion on the validity of any outstanding rights. Alternatively, if the current landowner and the third-party can come to mutually acceptable terms for the outstanding rights, and *those terms are also acceptable to the Forest Service*, have the landowner issue a recordable document to the third-party at closing.

Period of Use – this is the time of the year that the water can be legally used, i.e. May 15 to October 15 or year round use is expressed as Jan 1st to Dec 31st

POD – means Point of Diversion. That is the point where water is diverted from its naturally occurring water course. Usually described by Township, Range, and Quarter Quarter.

POU – means Place of Use. That location where the water is actually utilized, usually described by Township, Range, and Quarter Quarter.

Priority Date – this is the date the water was first put to beneficial use. This date also determines your place in line as far as receiving water.

Reservations - If the water right is retained by the landowner, a reservation is needed which describes the water rights and any diversions on the lands that provide for the continued use of the lands to be conveyed. Before agreeing to any reservation(s), carefully weigh the effect the reservation(s) could have on the use of the land for National Forest purposes right. Consider the management guidelines and objectives for the area. All water right reservations on lands being acquired under the Weeks Act are subject to 36 CFR 251.19 of the Secretary's Rules and Regulations. Use these regulations as guides for writing stipulations covering conveyances under other authorities. However, these standard regulations are general and may not adequately address the specific land management concerns associated with some commonly proposed reservations. Adopt special stipulations as necessary for each case and incorporate them into the option, agreement, and deed. Reject proposed perpetual reservations for dam, power, or reservoir sites. However, when a careful analysis indicates that public benefits of the acquisition clearly outweigh the disadvantages of the reservations the Forest Service may consider acquiring the land, if the owner defines the boundaries of the reserved areas with sufficient accuracy so that it may be surveyed. Require the non-Federal party to grant rights necessary to allow the United States to fully perform its administrative responsibilities and minimize any adverse effects of the reservation on the property to be acquired

Reserved - refers to a water right that we are going to keep even though it is appurtenant to lands we are giving up in the land adjustment action.

Risks of Forfeiture - There is a risk in losing a water right when any of the following events occur: Non-use, Mis-use, Reservations to the U.S. are not being made where the U.S. is retaining a water right, or an outstanding right associated with a water right has not been protected before conveyance of the transaction deed. In the event that the Forest Service uses public funds to obtain a water right and then the water right becomes subject to forfeiture due to non-use, this can be considered misuse of public funds. For this reason, the risk assessment portion is important. The Forest must assess the risk of forfeiting a water right versus the benefits of acquiring the water right. The Forest must also identify action items that will be taken to alleviate or minimize the risk of forfeiture.

Source – the name of the water body from which water is diverted. In the event of a well, the source can be groundwater, underground source, or other names that imply water found in a subterranean aquifer.

Guidance

General - When water rights are conveyed to the United States you must ensure that the non-Federal party owns the water rights to be conveyed and that the water rights can be put to beneficial use under the laws of the state in which the lands are located.

When water rights are retained by the landowner, a reservation will be needed which describes the water rights and any diversions on the lands that provide for the continued use of the lands to be conveyed. Before agreeing to

the reservation, carefully weigh the effect the reservation could have on the use of the land for NF purposes. Consider the management guidelines and objectives for the area.

When there is a third party involved and there are no recorded outstanding rights, then you must ascertain what rights, if any, a third-party may have. This can be done by evaluating the water right, inspecting the land, and requesting a legal opinion on the validity of any outstanding rights. ALTERNATIVELY, if the current landowner and the third-party can come to mutually acceptable terms for the outstanding rights, that are also acceptable to the Forest Service, have the landowner issue a recordable document to the third-party.

Inspect the property to be acquired by the United States to identify possible rights of possession or other interest in the land that are not of record. Use either the Certificate of Possession or a supplemental statement to document the inspection and attach a copy to the Specialist Report - Water Rights. The statement or Certificate of Possession must describe the use of the land regarding the rights listed in the water right, access to any diversion(s) or use(s) of water rights, as well as any other uses that can be identified. The Forest Water Rights Coordinator or Hydrologist will suggest uses of the water that will have utility for the Federal lands, and will evaluate whether those uses are permissible beneficial uses under State law. If there are no feasible beneficial uses for the water on Federal land, the United States will risk losing the acquired water rights. In cases where there is no foreseeable beneficial use, the decision maker should consider severing the water rights from the land.

The appropriate State Water Uses and Protection Coordinator will work with the Forest Water Rights Coordinator or Hydrologist to reconcile any questions or problems. The appropriate State Water Uses and Protection Coordinator will review the Specialist Report - Water Right to ensure that all the lands have been searched, and that documentation for the search have been attached to the Analysis. Comments will address the risks and benefits of acquiring or disposing of the water rights and whether the acquisition or conveyance is consistent with Regional policy.

Risks - The Forest can assess the risk of forfeiting a water right versus the benefits of acquiring the water right, identify action items that will be taken to minimize the risk, identify the individuals responsible for following through with the action items, and estimate the time needed to accomplish the action items. The recommendation from the Forest regarding the use of the water rights being acquired and what action needs to be taken to address the outstanding rights associated with the water rights being conveyed should be incorporated into the Feasibility Report.

The District Ranger as well as the Forest Supervisor need to acknowledge that there is a potential risk by signing in the space provided. Their signatures acknowledge that they are aware that there is a potential risk involved with acquisition of water rights, conveyance of a water right, and action items that will be taken to minimize the risk.

Regional recommendations and concurrence and documented in this section also. The Regional Water Rights and Uses Program Manager must review and comment on the risk analysis, outline action items necessary to minimize the risk, and discussion of the Regional policy. The Regional Lands Director must concur on all cases where a risk is involved with acquisition of water rights or conveyance of a water right without protection of the outstanding rights associated with the water right. After concurrence is obtained, the original is sent to the Regional Land Adjustment Section and a copy to the Forest.

Secretary's Rules and Regulations - All water right reservations on lands being acquired under the Weeks Act are subject to 36 CFR 251.19. Use these regulations as guides for writing stipulations covering conveyances under other authorities. However, these standard regulations are general and may not adequately address the specific land management concerns associated with some commonly proposed reservations such as the right to use a spring or a well for a residential water supply. Adopt special stipulations as necessary for each case and incorporate them into the option, agreement, and deed.

Additional Guidance - See the October 28, 1999, Regional Policy Statement on Acquisition and Disposal of Water Rights for discussion of the information required in this analysis. However, any decision to abandon a water right must be thoroughly documented and may require OGC and/or Washington Office review.

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State of Nevada
Department of Conservation & Natural Resources
Division of Water Resources
Tracy Taylor, P. E. State Engineer

NEVADA DIVISION OF WATER RESOURCES WATER RIGHTS DATABASE

SPECIAL HYDROGRAPHIC ABSTRACT

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Displaying 1 to 21 of 21 records

CHANGE	FILING	POINT OF DIVERSION	DIV TYPE	IRRIGATED ANNUAL	OWNER C
BASIN APP OF APP CERT IMG DATE	STAT SRC QQ QTR SEC TWN RNG (CFS)	USE SUP ACRES	DUTY	UNIT CO RECORD	
049 18987	6106 IMG 07/08/1960	ABR UG SE NE 15 34N 55E 0.000 MUN	0.00	0.00;	AFA EL ELKO-CIT
CHANGED BY: 49617 CER UG					
049 31181	9717 IMG 03/14/1977	CER UG SW SE 15 34N 55E 0.111 COM	0.00	16.88;	SHARP AFA EL CONCRET
COMPAN					
049 35612	IMG 07/11/1978	ABR UG NW SE 15 34N 55E 0.000 COM	0.00	0.00;	EL ELKO HE, EL COMPAN
CHANGED BY: 42981 ABR UG					
CHANGED BY: 45234 CAN UG					

049 18987	6106	IMG 07/08/1960	ABR UG SE NE 15 34N 55E	0.000	MUN	0.00	0.00;	AFA EL ELKO-CIT
CHANGED BY: 49617	CER UG							

049 39050 IMG 09/13/1979 CAN UG NW SE 15 34N 55E 7.000 COM 0.00 5067.21; AFA EL ELKO HE,
CHANGED BY: 47245 DEN UG COMPAN

049 39051 IMG 09/13/1979 CAN UG SW NE 15 34N 55E 10.000 COM 0.00 7238.89; AFA EL ELKO HE,
ELKO HE,
COMPAN

049 39053 IMG 09/13/1979 CAN UG NE NW 15 34N 55E 10.000 COM 0.00 7238.89; AFA EL ELKO HE,
ELKO HE,
COMPAN

049 42981 35612 IMG 12/19/1980 ABR UG SW SW 15 34N 55E 0.000 COM 0.00 0.00; AFA EL ELKO HE,
CHANGED BY: 45548 PER UG COMPAN

049 43911 IMG 06/17/1981 DEN UG NW SE 15 34N 55E 0.000 0.00 0.00; EL JENNING,
EL EDITH A.

049 45234 35612 IMG 01/18/1982 CAN GEO SW SW 15 34N 55E 1.500 COM 0.00 1085.84; AFA EL ELKO HE,
ELKO HE,
COMPAN

049 45548 42981 IMG 04/16/1982 PER GEO SW SW 15 34N 55E 1.500 COM 0.00 1084.00; AFA EL ELKO HE,
ELKO HE,
COMPAN

049 45576 IMG 04/23/1982 RFA GEO SW SE 15 34N 55E 3.000 MUN 0.00 1085.84; AFA EL ELKO CIT

049 47043 IMG 06/30/1983 PER GEO NE NE 15 34N 55E 1.000 COM 0.00 723.95; AFA EL ELKO COI
ELKO COI
SCHOOL
DISTRICT

049 47245 39050 IMG 09/15/1983 DEN UG SW SW 15 34N 55E 3.000 COM 0.00 2171.68; AFA EL ELKO HE,
ELKO HE,
COMPAN

049 47701 IMG 02/21/1984 WDR UG SW SW 15 34N 55E 3.000 IRR 0.00 2172.00; AFA EL ELKO HE,
ELKO HE,
CORPORA

049	<u>49617</u>	<u>18987</u>	13044	IMG 01/06/1986	CER	UG	SE	NE	15	34N	55E	1.894	MUN	Y	0.00	597.18;	AFA	EL	ELKO-CIT
049	<u>55251</u>			IMG 09/04/1990	PER	UG	SW	SW	15	34N	55E	0.056	ENV		0.00	40.51;	AFA	EL	DEVELOP ASSOCIA

There is one permit in the NE NE one cancellation in the SW and 2 water rights in the SE

There is one permit in the NE NE
one cancellation in the SW
and 2 water rights in the SE

NEW STATE NY No 4